IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Bail Appl..No. 5829 of 2007()

CRIME NO.80/07 OF ARYANCODE POLICE STATION

.....

: PETITIONERS/ACCUSED 1 AND 2:

---

1. MOHANDAS, S/O. NARAYANAN NAIR,
SOUMYALAYAM CHENADU, OTTASEKHARAMANGALAM,
THIRUVANANTHAPURAM.

2. RAVEENDRAVIKRAMAN NAIR,
S/O. VELAYUDHAN PILLAI, PALAZHI, CHENADU,
OTTASEKHARAMANGALAM, THIRUVANANTHAPURAM.

BY ADV. SRI.S.V.PREMAKUMARAN NAIR
SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY DIRECTOR GENERAL OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5829 of 2007

Dated this the 26th day of September 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2 in a crime registered for offences punishable inter alia under Section 395 I.P.C and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The crime has been registered on the basis of the private complaint filed by the de facto complainant which has been referred to the police under Section 156(3) Cr.P.C. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations raised against them are false, frivolous and vexatious. This complaint is a counter blast against the prosecution initiated by the second accused against the de facto complainant under Section 138 of the Negotiable Instruments Act.

3. The alleged incident in this case had taken place on 3/4/2007. Complaint was lodged before the learned Magistrate only on 30/4/2007. The notice of demand in the prosecution under Section 138 of the Negotiable Instruments Act was issued

by the counsel for the second petitioners on 20/4/2007. After receipt of the said notice of demand, a private complaint has been filed by the de facto complainant on 30/4/2007 before the learned Magistrate. The allegation that an amount of Rs.13,000/- and the cheque in question (which is the subject matter of the prosecution of 138) have been snatched away has been raised belatedly as a counter blast and as a probable defence in the prosecution under Section 138 of the Negotiable Instruments Act. In these circumstances, the petitioners may be granted anticipatory bail, it is prayed.

4. The learned counsel for the petitioners submits that in view of the provisions of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, this court may not be jurisdictionally competent to grant anticipatory bail for the offences under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The petitioners are willing to surrender before the learned Magistrate and seek regular bail for the said offences. But the petitioners apprehend that because of the inclusion of the grave allegation under Section 392 I.P.C, the learned Magistrate may not consider the

application for regular bail, the said offence being triable exclusively by a court of Session.

5. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor submits that the petitioners may be directed to surrender before the learned Magistrate and seek regular bail.

6. I see the anxiety and apprehension of the petitioners that the learned Magistrate may not consider the application for bail for the offences punishable under Section 395 I.P.C. I have hence carefully gone through the allegation under Section 395 I.P.C. I am satisfied that though no anticipatory bail need be granted to the petitioners, the petitioners can be directed to surrender before the learned Magistrate and seek regular bail. While considering such application for regular bail, the learned Magistrate shall eschew the allegation under Section 395 I.P.C and consider the bail application on merits, in accordance with law and expeditiously.

7. The learned counsel for the petitioners rightly points out that the learned Magistrate under Section 437 Cr.P.C has got the duty and obligation to consider the application for bail by

an accused facing allegations under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on merits and in accordance with law. That position has been repeatedly clarified by this court in the decision in Ali v. State of Kerala [2000(2) KLT 280, Shanu v. State of Kerala [2000(3) KLT 452, Krishnakumar v. State of Kerala [20005(1) KLD(Cri.)42] and P.P.Kader v. State of Kerala [2005(1) KLD(Cri.)250].

8. In the result, this application for anticipatory bail is dismissed but with the specific observation that the petitioners shall be at liberty to appear before the learned Magistrate and seek regular bail. The learned Magistrate shall consider such application for regular bail on merits, in accordance with law and expeditiously on the date of surrender itself. Such application shall be considered in the light of the four decisions referred above. Such application shall be considered by the learned Magistrate reckoning that there is no allegation under Section 392/395 I.P.C raised against the petitioners.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007